

RECEIVED & FILED
99 OCT 22 PM 1:57
CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

HECTOR TORRES,
Plaintiff,

v.

AMERICAN TRANS AIR, et al.,
Defendants.

CASE NUMBER: 98-1328 (HL)

ORDER

Before the Court is defendant American Trans Air's motion for summary judgment as to plaintiff Hector Torres' complaint based on injuries sustained due to an alleged "hard landing" of his aircraft. Summary judgment is warranted only if the pleadings, depositions, answers to interrogatories, admissions and affidavits, demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). "The evidence illustrating the factual controversy cannot be conjectural or problematic; it must have substance in the sense that it limns differing versions of the truth with a factfinder must resolve at an ensuing trial. *Mack v. Great Atlantic And Pacific Tea Co., Inc.*, 871 F.2d 179, 181 (1st Cir. 1989). Furthermore, in deciding a summary judgment motion, the Court must view the facts in the light most favorable to the nonmoving party, drawing all reasonable inferences in that party's favor. *Dubois v. United States Department of Agriculture*, 102 F.3d 1273, 1284 (1st Cir. 1996).

While plaintiff has not presented an overwhelming amount of evidence, the statements he made in his deposition, along with the damage to the cargo bins above his seat, leads the Court to conclude that whether or not there was in fact a "hard landing" is a genuine issue as to a material fact that should be presented to a factfinder to resolve at trial. Defendant insists that plaintiff's claim must fail because he has failed to produce evidence that the pilot made a notation of a "hard landing." However, that is far from conclusive. The issue will be presented to the factfinder, and a determination may be influenced by the plaintiff's credibility, an issue not for this Court to determine on a motion for summary judgment. *Perez-Trujillo v. Volvo Car Corp.*, 137 F.3d 50, 54 (1st Cir. 1998). Consequently, defendant's motion for summary judgment (Dkt. No. 6) is denied.

Date

10/19/99

HECTOR M. LAFFITTE
Chief U.S. District Judge

Rec'd:

EOD:

By:

#

2

14